

**CRITICAL ASSESSMENT OF THE CHALLENGES FACED BY
ZIPA IN ENSURING INVESTORS' COMPLIANCE TO
INTENDED INVESTMENT**

By

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**A Thesis Submitted in (Partial) Fulfillment of the Requirements for
Award of the Degree of the Master of Law (LL.M.) in Commercial
Law of Mzumbe University.**

2013

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled: **Critical Assessment of Challenges Faced by ZIPA in Ensuring Investors ' Compliance to Intended Investment** in fulfillment of the requirements for award of the degree of Master of Laws in Commercial Law (LL.M) of Mzumbe University.

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DEDICATION

To my Children Munira, Intisar, Muntasir and Ihamu and My beloved wife
Ashura Zaidu Juma.

LISTS OF ABBREVIATIONS AND ACRONMYS

BITs	Bilateral Investment Treaties
COMESA	Common Market Eastern and Southern Africa
DAWASA	Dar es Salaam Water and Sewage Authority
DTT	Double Taxation Treaties
EU	European Union
FDI	Foreign Direct Investment
FPI	Foreign Portfolio Investment
FTA	Free Trade Area
LHRC	Legal and Human Right Central
MIGA	Multilateral Investment Guarantee Agency
SADC	Southern Africa Development Community
TRA	Tanzania Revenue Authority
UIA	Uganda Investment Authority
VAT	Value Added Tax
ZATI	Zanzibar Association of Tourism Investors
ZIPA	Zanzibar Investment Promotion Authority
ZTGA	Zanzibar Tourism Guides Association

ABSTRACT

This study is about critical assessment of challenges faced by ZIPA in ensuring investors' compliance to intended investment. This research was aimed at examining the challenges faced by ZIPA in ensuring investors' compliance to intended investment in Zanzibar. In realizing this goal, the tourism sector was chosen as a focal study in this research and the researcher examined the Zanzibar Investment Promotion and Protection Act 2004, the Zanzibar Employment Act 2005, the Immigration Act, 1997 (Revised Law), the Zanzibar Tourism Act 2009, the Transfer Land Act 1994 and the Land Tenure Act 1992 so as to assess those challenges in ensuring the investors' compliance to intended investment.

This study was basically a qualitative research which was aimed at enabling collection of detailed information about the problem under study. The researcher used interview guides and questionnaires as tools of collecting detailed information from the respondents. Kinds of sampling being used in this study, was purposive sampling where total of 22 respondents; among them, there were investors, lawyers and other stakeholders.

This number and kind of respondents provided good findings concerning challenges faced by ZIPA in ensuring investors' compliance to intended investment are as there is the weakness of the legal frameworks in Zanzibar, there is a bureaucracy and corruption in the government institutions and failure of the government to harmonize the East African laws. Also, disputes in the society and the absence of the legally recognized rules of investment.

In this, the researcher recommended that the government has to review all laws of investment as well as the corruption law in order the investors to comply them attentively and due to the union of East African Community, the harmonization of laws is also very important. The government has to reset ZIPA to be as a really One Stop Centre.

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Metalclad Corporation Vs The United Mexico States, ICSID Case No. ARB / 97/ 1.

Maisha Mazuri Ltd Vs Shaaban Sarboko and Others, Land Tribunal, Civil Case No. 67 of 2011.

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Land Tenure Act, No 2 of 19992 (as amended in 2010).

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The Environmental Management for Sustainable Development Act, 1996.

The Zanzibar Tourism Act, No 6 of 2009.

CHAPTER ONE

1.1 Introduction

Zanzibar is a part of the United Republic of Tanzania. It consists of two main islands of Unguja and Pemba and about fifty other small islets. The islands are located at 40 km off the Mainland Coast of East Africa in the Indian Ocean between latitude 5 and 6 degrees South and longitudes 39.5 and 40 degrees East. The two main islands are 50 km apart separated by the 700 metre deep Pemba channel. The total surface area of the islands of Zanzibar is 2,654 square kilometers, while Pemba has an area of 988 square kilometers.¹

Zanzibar got its independence through the revolution of 1964 which was led by Abeid A. Karume who then became the first president of Zanzibar.

The Revolutionary Government of Zanzibar is the Government which is in the United Republic of Tanzania and is head by Hon. Ali Moh'd Shein as the President of Zanzibar and the chairman of the Revolutionary Council. Zanzibar has its own system of executive, Judiciary system but court of appeal is a matter of union and also Zanzibar has its own parliamentary system (the House Representatives) which passes the laws that are only implemented in Zanzibar.

The issues of investment are among non – union matters therefore each part of union deals on its own. On the Revolutionary Government of Zanzibar, investment is vested under the Ministry of Trade, Industries and Investments. Thus, Zanzibar has its own laws governing investment enacted by the House of Representatives.

¹ Zanzibar Investment Policy, www.zanzibarinvest.org/investment-policy.pdf, Accessed on 13th July, 2013.

1.2 Background to the Problem

During the past few decades the world witnessed the entrenchment of globalization that significantly eroded barriers to cross-boarder movements a process that has enabled economic agents to freely choose where to save and invest based on global considerations.

Globalization has among others, facilitated private capital to flow cross countries with little restrictions. Capital is thus flowing relatively freely in search of higher returns even into the emerging capital markets of developing countries. Developing countries on their part benefit from private capital flows and these benefits have thus influenced developing countries to increasingly put in place the environment necessary for attracting foreign private capital flows.

Among other efforts, countries have liberalized their economies, adopted appropriate macro-economic policy frameworks, improved infrastructure and public service delivery, put in place the right financial intermediaries and addressed governance issues.”²

Therefore, the governments of developing countries are cognizant of this fact and also are aware of development opportunities associated with private capital inflows and since the mid 1980’s made efforts to attract foreign investment. In Kenya, among the efforts they made was to establish Kenya Investment Authority (KenInvest). “Kenya Investment Authority (KenInvest) is a statutory body established in 2004 through an Act of parliament (Investment Promotion Act No. 6 of 2004) with the main objective of promoting investment in Kenya. It is responsible for facilitating the implementation of new investment projects,

² <http://www.bot-tz.org>, Accessed on 6th March, 2013.

providing an After care services for new and existing investments, as well as organizing investment promotion activities both locally and internationally”³.

Uganda is one of the fastest growing economies and one of the most liberal countries for foreign investment in Africa. Like Kenya, Uganda took the effort of establishing the Uganda Investment Authority (UIA). “Uganda Investment Authority is the agency set up by Government under the investment code, statute No. 1 of 1991 to promote investment in Uganda; to market Uganda’s investment opportunities to targeted investors all over the world; to co-ordinate the national investment marketing programme; and to serve as the point of contact for investor’s interest in Uganda”⁴.

Apart from that, Zanzibar, which is part of the United Republic of Tanzania, consists of two main Islands of Unguja and Pemba, and other small Islands. The islands are located 40km off the Mainland Coast of East Africa in the India Ocean between latitude 5 and 6 degrees South and longitudes 39.5 and 40 degrees East.

Zanzibar was depending only in the production of cloves in order to sell them in the world markets. But due to the collapse of the clove market in the world markets, the government of Zanzibar tried to initiate other means of government revenue so as to reform its economy. Therefore, the Government of Zanzibar is committed to promote private sector as an imputes of economic growth and means to strengthen the country’s investment environment⁵.

“The Government started to change the economic policies in the mid 80s, and it diversified the economy to allow private participation in business. Then the

³ <http://www.investmentkenya.com>, Accessed on 6th March, 2013.

⁴ <http://www.wakili.co.ug>, Accessed on 7th March, 2013.

⁵ The Zanzibar Investment Report, 2004, pg 9, <http://www.bot.org>, Accessed on 20th December, 2012.

government introduced a legal framework that allows private participation in business and trade.

Due to the changing of economic policies, the department of investment was established in the ministry of finance. In 1991 it changed from department to commission. Since business doesn't want bureaucracy, the Commissioner asked for autonomy of that institution and the name was changed from Department of Investment to Zanzibar Promotion Agency (ZIPA). The main objective is to allow private participation in investment and trade”⁶.

But due to the changes of globalization, ZIPA had also to change and therefore they had to change their investment Act to fit with the 21st Century. Therefore, in order to improve efficiency and creating supportive environment for investment and trade, the government of Zanzibar enacted a new investment Act⁷, which led to the establishment of Zanzibar Investment Promotion Authority (ZIPA) to act as a focal point for promotion and facilitation of investment and trade in Zanzibar.

Due to that situation, the tourism industry had shown signs of increasing its contribution to the economy in terms of revenue contribution, employment generation as well in mobilizing investment. Therefore, many foreign investors have entered in Zanzibar to invest and most of them have invested in the tourism industry.

After the establishment of ZIPA that contributes foreign investors to invest in Zanzibar, there are a lot of successes in the sector of investment in Zanzibar. But, however, there are challenges faced by ZIPA in ensuring investors' compliance to

⁶ Interview with DR. Hamed R. H. Hikmany, <http://www.winne.com/tanzania>, Accessed on 6th March, 2013.

⁷ The Zanzibar Investment Promotion and Protection Act No 11 of 2004.

intended investment. Some of these challenges hinder the development of investment in Zanzibar.

Therefore, the researcher intended to make observations concerning those challenges faced by ZIPA in ensuring the investors compliance to intended investment in Zanzibar.

1.3 Statement of the Problem

After the establishment of Zanzibar Investment Promotion Authority in 1980's, it was thought that as the beginning of the success of the investment activities in Zanzibar. On the contrary, there are a lot of problems have been found in the development of the investments in Zanzibar.

There is a problem that some investors (particular foreign investors) do not comply with their intended investment contracts in Zanzibar. Some of the investors sometimes enter the contracts of investments and they misuse their intention of investing. For instance, Zanzibar government (through the Ministry of Land) has nullified 60 Land lease agreement for breach of contract. Some investors implement projects different from what is in their land lease contracts. Some have applied for the building and running of dispensaries, but after a short while they change to other businesses like operating bars⁸.

Therefore this study due to the above problem intends to examine the challenges faced by ZIPA in ensuring investors' compliance to intended investment and recommend proper measures to be taken to assure the investors comply with their intended investment contracts.

⁸ DAILY NEWS on line Edition, <http://www.dailynews.co.tz>, Accessed on 26th December, 2012.

1.4 Research Questions

The following were the research questions that the researcher asked as the cause of meeting the objectives of the study:

1. Whether Zanzibar legal framework on investment is effective for the investors to comply with it?
2. Whether there are other grounds than legal frameworks that hinder investors to comply with their intended investment?

1.5 Objectives of the Study

The general objective of this research was to examine challenges faced by ZIPA in ensuring investors compliance to intended investment. Specific objectives were as:

1. To show how the legal frameworks on investment to what extent investors fail to comply with it.
2. To examine other grounds than legal framework that hinders the investors to comply with the investment contracts.

1.6 Significance of the Study

The importance of the study is that, it provides useful information concerning observation of the laws and procedures followed by ZIPA in ensuring investors' compliance to intended investment and challenges faced by them.

Findings of this study are useful in policy making and enactment of several laws relating to investment and for stability and sustainability of the investment environment.

In addition to that, this study plays an important role in the promotion and facilitation of investment in Zanzibar.

Academically, this study provides knowledge concerning investment and that is a reference material for future research on the field of investment.

1.7 Literature Review

In this part of the research, the researcher reviewed the related literatures as there was no related research covering this topic that has been found irrespective of reasonable effort that has been taken to find it. However the researcher for efficiency and precision purpose organized the literature review as follows:

The International Law on Foreign Investment⁹ provides that the word “investment” can be defined in many ways according to different theories and principles. It is a term that can be used in a number of contexts. However the different meanings of investment are more like than dissimilar.

Generally, investment is the application of money for earning more money. Investment also means savings or savings made through delayed consumption. According to economics, investment is the utilization of resources in order to increase income or production output in the future. An amount deposited into a bank or machinery that is purchased in anticipation of earning income in the long run are both examples of investments.

Another relevant literature which defines Investment was **the Zanzibar Investment Promotion and Protection**¹⁰ Act which provides that “Investment shall comprise the contribution of local or foreign capital by an investor or body corporate including the creation or acquisition of business assets by or for a business enterprise and shall include expansion, restructuring, improvement or rehabilitation of a business enterprise”.

⁹ Sonaraja. M, The International Law on Foreign Investment, Second Edition, page 7.

¹⁰ Section 3 of the Zanzibar Investment Promotion and Protection Act no 11 of 2004.

Another relevant literature was **International Institute for Sustainable Development**¹¹ which states that investment law is composed of three legal sources: International law (especially investment treaties), investment contracts between investors and states and domestic law.

At the International level, the main legal instruments relating to investment are investment treaties. These primarily aim at protecting the foreign investor in the host state. Today we have a complex web of 300 such instruments at the bilateral and regional levels. In addition, a wide array of other treaties and International instruments are also relevant to investment, including those on trade, taxation human rights, labour, the environment, corruption and corporate and social responsibility, among others.

Domestic law applies to and regulates both domestic and foreign investment. It consists of all laws and regulations of the host state, including for example, investment laws and codes, tax codes, mining and other natural resources laws, as well as environmental laws and labour regulations, to name just few.

The third source of law applicable to investments is the investment contracts concluded between individual investors and the host state. These contracts can be made subject to existing and future domestic law, or can be written so as to override otherwise applicable domestic law (through stabilization and similar clauses). Although investment contracts often contain the most relevant information about the investment, these remain secret in many countries of the world.

However, before any source of investment law is drafted and implemented, a government must frame the investment policy in order to attract the investment

¹¹International Institute for Sustainable Development, Investment Law, <http://www.iisd.org/investment/law>, Accessed on 4th March 2013.

environment in the host state. This is emphasized in the literature of **Investment Law Reform**¹² which states that “A country’s investment code cannot be drafted out of context- it must reflect its investment policy. In fact, the code is the legislative instrument for implementing the policy.

Before a government drafts a new investment code or revise the existing one, a government needs to formulate its investment policy, and when a government has formulated its overall investment policy or strategy based on issues such as the degree of openness and control or facilitation it wants to put in place, it has to implement the policy. Investment legislation translates the policy into legal terms that are actionable including in a court of law. If the policy is not clear, however, these issues will resurface and hamper the law-making process.

It also should be noted that policy (and therefore legislation) is not a static principles, “Carved in stone,” but a dynamic element that evolves with the country’ political and economic circumstances.”

Investment Law Reform¹³ states that most investors expect a host state to guarantee them, at minimum the rights and protection. The government needs to first establish these guarantees as a matter of policy and then to seek implementation through legislation.

Moreover, it states International Conventions and agreements on investment and trade, that a host state should consider when revising its investment policy and legislation. Conventions on investment and trade provide a great degree of protection to foreign investors. If the country is already a signatory to these

¹² A Handbook for Development Pratictioners, Pg 4-5, <http://www.wbginvestmentclimate.org>, Accessed on 5th March, 2013.

¹³A Handbook for Development Practitioners, <http://www.wbginvestmentclimate.org> Accessed on 17th December,2012.

conventions, it is important that the host state does not introduce into the investment law any provision that may contradict the content or undermine the effect of these conventions.

Also another literature is the **World Bank Guidelines on the Treatment of Foreign Direct Investment**¹⁴ which provides the duties to the host state to guarantee the protection and security to the investors and their person, property rights and interest and to the grant of permits import and export licenses and the authorization to employ and the issuance of the necessary entry and stay visas to their foreign personnel.

Also in a decided case of *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*¹⁵, whereby in 2003, the United Republic of Tanzania was awarded by the World Bank, African Development Bank and European Investment Bank funding in the amount of USD 140,000,000 for the purpose of commissioning a comprehensive program of repair and upgrades to, and the expansion of the Dar es salaam water and sewerage infrastructure. As a condition of the funding, the Republic was obliged to appoint a private operator to manage and operate the water and sewerage system, and carry out some of the work associated with the project. The Republic therefore invited tenders for the project in 2002.

Therefore, Biwater International Limited, a company incorporated under the laws of England and Wales, and HP Gauff Ingenieure GmbH and Co. KG-JBG (Gauff), a German Corporation submitted a joint tender for the project and formed a local company named City Water Service Limited. The City Water as an operating Company entered into three key contracts for the implementation of the project with Dar es salaam Water and Sewerage Authority (DAWASA). These contracts were

¹⁴ Article 3(a) of the World Bank Guidelines on the Treatment of Foreign Direct Investment.

¹⁵ <http://www.whitecase.com>, Accessed on 17th December, 2012.

the water and sewerage lease contract, the supply and installation of plant and equipment contract and the contract for the procurement of goods.

Due to the claims of poor performance of the City Water Company, the Government of United Republic terminated the lease contract and deported senior management of the City Water. But the International Centre for Settlement of Investment Disputes held that the act of the United Republic of Tanzania to deport the management of the Company was amounting to taking or expropriation and it was ruled that several of Tanzania's actions breached its treaty obligation to accord BGT's investment fair and equitable treatment.

Another case which is relevant in this research was *Metalclad Corporation v. The United Mexico States*¹⁶ whereby Metalclad, a U.S Corporation operating through its Mexico subsidiary (investment), received from the Mexican Federal government the permit to construct a hazardous waste landfill in Guadalcazar, Mexico. Five months after construction began, Metalclad was notified by the Municipality of Guadalcazar that it was unlawfully operating without a Municipal construction permit. Metalclad applied for a municipal permit and, in the meantime, completed construction of the landfill.

The municipal turned down Metalclad's application effectively barring the operation of the completed facility. In addition, later the Governor issued an Ecological Decree declaring a protected natural area which encompassed the landfill site and thus permanently closed the landfill.

Before the International Centre for settlement of Investment Disputes Tribunal, Metalclad claimed violations of NAFTA Article 1105 (Minimum Standard of Treatment).The Tribunal determined that Metalclad was denied fair and equitable

¹⁶ (ICSID Case No ARB (AB)/97/1, <http://www.biicl.org>, Accessed on 20th December, 2012.

treatment by Mexico because the municipal government had no authority to deny the construction permit on environmental grounds.

Another relevant literature was **the Constitution of Zanzibar 1984** which guarantees for human rights including property right. Due to the encouragement of investment in Zanzibar, the Constitution of Zanzibar provides the Bill of Rights in order to protect the property of the investors, particularly foreign investors. The Zanzibar Constitution 1984¹⁷ provides for the respect of private property as follows:

“No person shall be deprived of his property interest or right in that property except and upon compliance with the following conditions:

a)that the acquisition and occupancy of the property is of utmost importance for defence and security of the people health requirement, town planning and any other development in the public interest;

b)that the need to acquire the property in question is absolutely important to the extent that it legalizes its acquisition even if it be to the detriment of its owner;

c)that there exists a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation

Also, **the Zanzibar Investment Policy**¹⁸ provides that the Zanzibar government, through broad and specific fiscal and non-fiscal incentives, has provided a competitive investment climate. In turn, the government expects that investors will seriously take this opportunity to invest and participate in the development of the Island. In doing so all investors are required to obey the laws of Zanzibar.

Another policy was **the Zanzibar Tourism Policy**¹⁹ which provides that the government of Zanzibar is committed to develop, plan, manage and promote tourism industry that emphasizes sustainability, quality and diversification, and which is culturally responsible, socially desirable, ecologically friendly, environmentally sustainable and economically viable.

¹⁷ Article 17 of the Zanzibar Constitution, 1984.

¹⁸ The Zanzibar Investment Policy, pg 26-27, <http://www.zanzibarinvest.org>, Accessed on 18th December, 2012.

¹⁹ The Zanzibar Tourism Policy, <http://www.zanzibartourism.net>, Accessed on 18th December, 2012.

Other relevant literatures are some of the statutes, such as **The Zanzibar Investment Promotion and Protection Act**²⁰. This Act provides for the establishment of the Zanzibar Investment Promotion Authority which is the focal point for promotion, coordination and monitoring of local and foreign investments. It also provides that the Zanzibar Investment Promotion Authority will be a custodian as one-stop center, to oversee the implementation of the investment policy and compliance with regulation.

The land Tenure Act 1992 (as amended in 2010) was another relevant document concerning this study. It provides for the right of occupancy for Zanzibaris only²¹. The foreign investor is not allowed to acquire the right of occupancy instead he is leased land. There are two types of leases provided under the Act. These are lease of public land and lease of right of occupancy. Public land under control of the Government is leased by the Minister responsible for land for a period not exceeding 99 years subject to renewal. A right of occupancy is leased by the holder of the same for a period not exceeding 49 years subject to renewal. The Act also provides for the termination of lease and that of the right of occupancy and the effect of termination.

The Land Transfer Act²² was another relevant literature that is important in this research. It requires the owner of a right of occupancy on leasing his right of occupancy to get approval of the Land Transfer Board established under the Act.

Also there was another literature which is relevant in this research and was that **the Zanzibar Employment Act**²³ which provides the provisions concerning the

²⁰ Section 11 of the Zanzibar Investment Promotion and Protection Act No 11 of 2004.

²¹ Section 8(1)(a) of the Land Tenure Act No 2 of 1992 (as amended in 2010).

²² Act No 8 of 1994.

²³ Section 36(1)(b) of The Employment Act No 11 of 2005 provides that “No employer shall be permitted to employ a foreigner except in the following cases: where the vacant position is a management

employment of the foreigner must be considered under the provision of the Zanzibar Investment Promotion and Protection Act.

Dr. F. N. Lugoje, in his report “**Land Policy Reform in Zanzibar**”²⁴ states that guarantee of rights is particularly important to tourism and to crop and livestock farming where investment takes long to reap dividends for the investor. Many investors, local and foreign, weigh the investment climate before making a decision to invest in landed projects.

1.8 Research Methodology

Research methodology is a collective term for the structured process of conducting research. Research methodology comprises various components. In this study the components of research methodology which have been used are research design, target population, sampling size and sampling procedure. Other components are data gathering, data gathering instrument and data analysis methods.

1.8.1 Research Design

A research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure.²⁵ The nature of this study involved critics and analysis of the challenges faced by ZIPA in ensuring investors compliance to intended investment and the researcher could be able to come out with the accurate findings and propose the proper and suitable solutions to the said problem.

position for which the employer is allowed to employ a person of his or her choice under the provisions of the Zanzibar Investment Promotion and Protection Act of 2004.

²⁴ Land Policy Reform in Zanzibar. A Situation Analysis by Dr. F. N. Lugoje, pg 15, <http://www.dilaps.or.tz>, Accessed on 21st December 2012.

²⁵ Kothari C.R. (2004), Research Methodology, Methods and Techniques, 2nd edition, By New Age International (P) Ltd, New Delhi, India at p 31

The study has been through both theoretical frame work and the field work findings. The researcher dealt with scrutinizing all laws which governing the investment activities in Zanzibar and the existing documented data. Also the researcher dealt with field work findings through sample population whereas primary data were extracted through interview and questionnaires. Both theoretical contemplations and field work helped in collecting intended data.

Lastly the researcher has decided to use this type of research design because the research done under this design involved low cost and also under this type of research design it easy to access information.

1.8.2 Target Population

In this study, the target population involved the officials from ZIPA and Commission of Tourism, the investors and other stockholders, such as lawyers from various legal institutions such as the Attorney General Chamber's office, law private firms, the Zanzibar Law Society, Non-governmental Organizations and other governmental organizations.

The investors were targeted population because they are the main concerned on the research conducted. The researcher decided to choose lawyers believing that he could get proper and accurate information connected with challenges faced by ZIPA in ensuring investors' compliance to intended investment.

Officers from investment and tourism sectors were also targeted by the researcher since they are the main concerned on the promotion and protection of the investment (in tourism industry) in Zanzibar.

1.8.3 Sampling size

The exact number of items selected from a population to constitute a sample is what we call sample size²⁶.

The researcher conducted interviews to six (6) people and distributed sixteen (16) questionnaires as a sample in this particular study. Therefore twenty two (22) people are the sample size in this research. Among the people who were interviewed were one lawyer from private firm, one state attorney, three indigenous people and one investor from Investment Company of Kisiwa Hotel and Resort which is located at Paje in Unguja Island.

Among the people who were given questionnaires include seven officers from Zanzibar Investment Promotion Authority, six officers from Zanzibar Tourism Commission, one member from Zanzibar Association for Tourism Investors (ZATI) and two members from Zanzibar Tourist Guides Association (ZTGA).

1.8.4 Sampling Procedures

The selection of sample respondents was done during preliminary stage of the study in the field. The totals of 22 respondents were selected from different units available in the study. However, in this study, the researcher used two techniques of sample to select the respondents, are as follows:

(a) Purposive Sampling

A purposive sampling was used to select the respondents by virtue of their position and duty assigned, examples investor, officials from Zanzibar Investment Promotion Authority (including Labour official, official from Immigration department), officials from Commission for Tourism, from any other Associations which is dealing with the investment in Zanzibar and indigenous peoples

²⁶ Adam, J and Kamuzora, F, RESEARCH METHODS FOR BUSINESS AND SOCIAL STUDIES, page 124, First Published 2008.

surrounding the study areas. A total of 22 respondents were selected through this method. Purposive sampling helped the researcher to attain the respondents who were responsible and knowledgeable to the research topic.

(b) Random Sampling

Random sampling was used to select the respondents who represent the group of lawyers and investors in the study area; this was done in such a way that each individual gets equal chance to be taken in the sample. This technique enhances validity and reliability of the study because the findings are likely to reflect reality in the challenges faced by ZIPA in the development of investment in Zanzibar.

Also, random sampling techniques were employed to obtain sample from investment societies. The choice of this technique partly attributes to its simplicity and easiest to conduct, low degree of sampling error and its ability to provide equal opportunity for all investors and stakeholders from investment sectors in Zanzibar.

1.8.5 Data gathering Procedures

Data refers to all information a researcher gathers for his or her study.²⁷ There are two types of data: primary data and secondary data. Primary data refers to the information the researcher obtains from the field, i.e. from the subjects in the sample while secondary data refers to the information a researcher obtains from research articles, books, casual interviews,²⁸ etc. The data was collected in this study were both primary and secondary ones. Primary data was collected from personal interviews. Therefore, questionnaires, documentation and interviews guide was employed in data collection.

1.8.6 Data Gathering Instruments

The major data collection instruments that were employed in this study were questionnaires, documentation and interview guides. The instruments were

²⁷ Mugenda, Olive M. and Mugenda, Abel G. (2003), *Research Methods: Quantitative and Qualitative Approaches*. Pg 64, Acts Press: Nairobi.

²⁸ Ibid.

designed to extract information from cases and variables which were well formulated and tested. As this study required both qualitative and quantitative data, the questionnaires were drawn to comprise both closed ended questions for simple analysis of data and open ended questions with the aimed of acquiring opinions and critical presentation of the ideas of the respondents.

1.8.6.1 The Questionnaires

Questionnaires comprising close-ended and open-ended standardized questions were distributed to some of the officials of ZIPA and Commission for Tourism and members of Non-governmental Institutions. The questions which were imposed to the respondents enabled the researcher to understand visions of respondents on the competency of the legal regime in force in providing the solution of those challenges faced by ZIPA in ensuring investors' compliance to intended investment.

1.8.6.2 Interview

This instrument was also used to collect data from the investor and from other stakeholders like lawyers, and indigenous people who are residing near the area of study. As in questionnaires, interview questions were semi- structured and conducted in Kiswahili and English.

1.8.7 Data analysis

Data analysis is the process of examining what have been collected in survey or experiment by making inferences and deductions of some information gathered from field visits and documentary sources²⁹.

This study involves both qualitative and quantitative methods. Data was analyzed through quantitative method to produce descriptive statistics presented in the table

²⁹ Donald Kisilu Kombo and Delno L. A Tromp (2006). Proposal and Thesis writing at page 117-121.

as averages and percentages, and qualitative method data was presented in the form of summarized text and verbatim quotes of respondents or respondent's statements .

A substantial part of the analysis based on descriptive statistics such as editing, classification and tabulations. These statistics were used to assess respondents' answers, analysis of problems facing investors. The methods that were used to analyze data are most of them descriptive statistics while Micros word and Micro Soft Excel was used to generate a number of respondents with their answers.

1.8.8 Limitations to the Study

This study is about the challenges faced by ZIPA in ensuring investors' compliance to intended investment in Zanzibar. But what the study was deeply interested is only the investors' compliance to their intended investment. However, it came to my knowledge that government institutions and many people are not aware about the obligation of investors to comply with their intended investment. Therefore, it is likelihood to the people not to know the fruits of the investment in Zanzibar.

During the time of conducting this study the researcher encountered various hindrances like; reluctance of the respondents to fill the questionnaires on perception that the researcher was spying them that their responses might have negative results (impacts) to them. Also some officers in the ZIPA and Commission for Tourism offices were not well cooperative because of the same perceptions.

Another bottleneck in this task was the problem of literature review. There were no enough reading materials for the purpose of doing research (text books, research reports, journals etc) pertaining to the topic. This problem caused some difficulties to the researcher in conducting this study.

Moreover, funds were another problem in this study. There were no funds provided to the researcher from any sources. He had to use his own sources which were to

some extent not enough; hence making the completion of this study to be difficult. Despite all these limitations the data collected were enough to make the study successful.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

In this chapter the researcher explains key concepts of the investment and shows the obligations of the investors in investing and lastly shows the extent to which this concept intermingles with the challenges.

Moreover this section also deals with analysis of the laws and regulations relating to the compliance of investment. The researcher discusses and shows the position of the laws relating to the complying of investment and went even further to discuss about the lacunas of these laws in connection with the compliance of investors.

2.1 Introduction

In the developing countries including Zanzibar, the treaty law on investment is a very important matter in the investment activities. On the International investment, treaty law relating to international investments including the extent to which such investments would be subject to treaty rules on investor obligations to their host country or community and on the development of the host state. Treaty law on investment is basically of two kinds:

- (i) Non – multilateral international investment agreement, such as:
 - a. Bilateral investment treaties (BITs)
 - b. Region treaty instrument that may contain investment- related provisions, and
 - c. Preferential trade and investment agreements
- (ii) Multilateral treaty instrument.

However, to ensure that the foreign investors meets their obligations to the host state, the cooperation of the host state government is often necessary, as the latter can, and should, impose the necessary discipline on the investors.

Therefore, the home state government also undertakes obligations including ensuring that the investor's behavior and practices are in the line with and contributing to the interests, development policies and objectives of the host state.

2.2 The Concept of investment

The concept of an investment is not clearly established. It may involve the use of capital, technical and managerial skills, patents and other intellectual property as well as a variety of other assets. The word "investment" can be defined in many ways according to different theories and principles. Also in chapter 1³⁰, it is said that the absence of a common legal definition is due to the fact that the meaning of the term investment varies according to the object and purpose of different investment instruments which contain it.

Sonaraja³¹ explains in his book that investment is the application of money for earning more money. Investment also means savings or savings made through delayed consumption. According to economics, investment is the utilization of resources in order to increase income or production output in the future. An amount deposited into a bank or machinery that is purchased in anticipation of earning income in the long run is both examples of investments.

And, according to the Zanzibar Investment Promotion and Protection Act, it is defined that

*"Investment shall comprise the contribution of local or foreign capital by an investor or body corporate including the creation or acquisition of business assets by or for a business enterprise and shall include expansion, restructuring, improvement or rehabilitation of a business enterprise"*³².

³⁰ Definition of investor and investment in International Agreements, Chapter 1, page 46, <http://www.oecd.org>, Accessed on 7th November, 2013.

³¹ Sonaraja. M, (2004) The International Law on Foreign Investment, page 7, Second Edition, Cambridge University.

³² Section 2 of the Zanzibar Investment Promotion and Protection Act, No 11 of 2004.

2.3 Investment and the Obligations of the Investors

Before the foreign investors decide to invest in the host countries, the parties must enter the contracts of investments. These contracts actually will be either between a state and another state or between the investment company and the state. However, most of those investment contracts must have the obligations of the contracting parties. These obligations in the investment contracts must follow the international rules of investment.

However, under the international era, there are certain obligations that the investors are supposed to comply in the host countries depending on what they agree in their agreement of investments and following the legislations of the host countries. Some of these obligations that the investors have to comply in the host countries are as follows:

2.3.1 The Obligation to comply with the Domestic Law

According to the International Treaties, one of the obligations of the investors is to assure that they are obliged to comply with the domestic laws for their investments in the Host States. Although this obligation is not provided in some of the investment contracts but on practice the investors have the obligation to comply with the domestic laws.

The importance of the investors to comply with the domestic law is narrated in the Sadc Model Bilateral Investment Treaty³³ that Investors and Investments shall comply with all laws, regulations, administrative guidelines and policies of the Host State concerning the establishment, acquisition, management, operation and disposition of investments.

³³ Sadc Model Investment Bilateral Investment Treaty, Article 11, www. <http://www.iisd.org>, Accessed on 6th November, 2013.

Apart from that Sadc Model Bilateral Investment Treaty, the issue of obligation of the investors to comply with the domestic law also is put as the policy in Zanzibar. It is evident in the Zanzibar Investment Policy³⁴ that “... *all investors are required to obey the laws of Zanzibar*”. But most of the investors in Zanzibar, particularly those who are investing in the Tourism sector (who are running the business of hotels) actually they are not obeying the laws of investment in Zanzibar, for instance they are employing workers without following the laws of employment.

2.3.2 The Obligation of Admission and Establishment

Under Customary International law, states are under no obligation to admit foreign investment. But, accordingly, the right of natural and legal persons of one state to enter and conduct business in the territory of another state principally derives from international treaties.

However, according to the International Investment Agreement³⁵, there is an admission clause that makes the entry of foreign investors subject to the national laws or the host country. In these cases, foreign investors could claim investment promotion only in accordance with the host country's laws and regulations.

Apart from the admission, the International Investment Agreements³⁶, also defined “Establishment” means the right of nationals and companies of one member state to a permanent presence in the territory of another member state for the purpose of taking up economic activity as self employed persons (in the case of natural persons) or for the purpose of setting up, acquiring and managing of companies.

³⁴ Zanzibar Investment Policy, page 26, <http://www.zanzibarinvest.org>, Accessed on 5th November, 2013.

³⁵ International Investment Agreement ‘Key Issues’ Volume 1, <http://www.unctad.org>, Accessed on 5th November, 2013.

³⁶ International Investment Agreements ‘Key Issues’ volume 1, <http://www.unctad.org>, Accessed on 16th July, 2013.

“Investment promotion measures are usually applied in connection with the admission or establishment of foreign investors in the host country. Thus to the extent that international investment agreements include obligations of contracting parties concerning the admission and establishment of foreign investment, they might also apply to investment promotion measures in this context”³⁷.

In Zanzibar, the Zanzibar Investment Promotion and Protection Act is silence about the admission of the foreign investment in Zanzibar. This means that there is no provision in that investment Act which provides how the foreign investors may be admitted in Zanzibar.

But there is Immigration Act which provides the provision that the foreign investors may be admitted as follows

“No person shall for gain or reward engage in any prescribed trade business, profession or other occupation except in accordance with the terms of an appropriate permit issued in accordance with this Act”³⁸.

Although the Investment Act is silence about the admission of the foreign investors but the Immigration Act provides the provision which shows how the foreign investors may be admitted in Zanzibar.

Therefore, due to the existence of other laws which deals with investment in Zanzibar, the foreign investors have to comply with the domestic laws.

2.3.3 The obligation to manage the investment to a reasonable standard

It is the obligation of the investor in the host state to ensure that they manage the investment to a reasonable standard. Under this obligation, in the 2nd Annual

³⁷ ibidi

³⁸ Section 16 (2) of the Immigration Act, Cap 54 (RE:2002)

Forum of Developing Country Investment³⁹, it was expressed that there are three requirements as follows:

1. The first requirement is the investor to manage the investment in a way that will ensure the economic viability of the investment.
2. The second requirement of the obligation to manage the investment to a reasonable standard is a requirement to be aware of the regulatory environment in which it operates and to foresee regulatory changes that are likely as a result of the nature of the regulatory environment.
3. The third aspect of the obligation to manage the investment requires the investor to comply with any applicable regulatory requirements. Failure to comply with the laws of the host state may even lead to exclusion of investment from protection under the Bilateral Investment Treaty.

Under the International Environmental Standards it is the obligation of the investors to assure that having the standards of the management and improve the environment in the Host State. This also it is provided in the Sadc Model Bilateral Investment Treaty⁴⁰ that investments shall, in keeping with good practice requirements relating to the size and nature to the investment, maintain an environmental management system consistent with recognized international environmental management standards and good business practices standards. To this the investors are supposed to be aware with the regulatory environment in the Host State.

But the situation of Zanzibar is that most of the investors do not comply with this obligation properly, because the investors do not manage their investments to a reasonable standard. Some of the investors are not aware with the environmental regulatory thus why they cannot manage to improve the environmental and manage

³⁹ 2nd Annual Forum of Developing Country Investment Negotiators, <http://www.iisd.org>, Accessed on 4th November, 2013.

⁴⁰ Sadc Model Bilateral Investment Treaty, Article 14, <http://www.iisd.org>, Accessed on 6th November, 2013.

cannot manage do not comply the laws of the host state (Zanzibar), they also fail to manage to ensure economic viability of the investment.

2.3.4 The Obligation not to engage in unconscionable conduct

For the investors to comply with their investment agreement, it is the obligation of the investors not to engage in unconscionable conduct, such as corruption, fraud, misrepresentation, undue influence or abuse of power. If those happen the authority of the host state may legitimately take measures against the investors, so long as the measures are lawful and proportionate.

In Southern African, this obligation is prohibited, according to the Sadc Model Bilateral Investment Treaty⁴¹ as provides that investors and their investments shall not, prior to the establishment of an investment or afterwards, offer, promise or given undue pecuniary or other advantage, whether directly or through intermediaries, to a public official of the host state, or a member of an official's family or business association or other person in close proximity to an official, for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, in order to achieve any favour in relation to a proposed investment or any licences, permits, contracts or other rights in relation to an investment.

Therefore, due the above Sadc Model Bilateral Investment Treaty, it is the obligation of the Investors not to engage in the unconscionable conduct like corruption in the host state. But it is experience in Zanzibar that, some of the investors do not comply with this obligation for investment. They are engaging in unconscionable conduct. There are some of the investors dealing with the acts of corruption and they are abusing their power for investment. But unfortunately, the

⁴¹ Sadc Model Bilateral Investment Treaty with Commentary, Article 10,

government authorities do not take any legal action against those investors who commit the unconscionable conduct in Zanzibar.

2.3.5 The Obligation to make a reasonable risk assessment before investing

Before the investors decide to invest in the host state, they must undertake the assessment of their investment projects. For example the investor must undertake a proper feasibility study before investing. A good case which shows the investor failed to make an assessment of their investment is *Biwater Gauff v. Tanzania*, in that case the investor claimed that Tanzania had wrongfully expropriated its contract to operate and manage various aspects of the Dar es Salaam drinking water supply. The tribunal held that it was in no doubt that Biwater' bid was "poorly prepared" and it was manifested that serious problems were encountered in the performance of the contract from the very start.

In addition to the above case, the Sadc Model Bilateral Investment Treaty⁴² provides the provision that investors or their investments shall comply with environmental and social assessment screening criteria and assessment processes applicable to their proposed investments prior to their establishment as required by the laws of the Host State for such an investment.

Therefore, due to those authorities above, it is important to the investors to make an assessment of their project before investing as an obligation. In Zanzibar, the issue of environmental assessment is provided in the Environmental Management for Sustainable Development Act, 1996 which provides that

*"No person shall undertake any activity which is likely to have a significant impact on the environmental without an environmental impact assessment certificate"*⁴³.

⁴² Sadc Model Bilateral Investment Treaty, Article 13, <http://www.iisd.org>, Accessed on 6th November, 2013.

⁴³ Section 38(1) of the Environmental Management for Sustainable Development Act, 1996.

Therefore, according to the above provision, it is the obligation of investors in Zanzibar to make an assessment of their projects before investing and it is an offence to establish the investment without making a feasibility study.

2.3.6 Obligation of Transparency

A key aspect of the concept of Transparency as commonly understood in connection with International economic agreements “involves the publication of domestic laws, regulations and administrative practice that are relevant to the subject matter of the agreements in question”⁴⁴.

In other words, the concept of transparency “is closely associated with promotion and protection in the field of International investment. In the present context, transparency denotes a state of affairs in which the participants in the investment process are able to obtain sufficient information from each other to make informed decisions and meet obligations and commitments”⁴⁵.

Therefore, it is the obligation of the investors, in order to comply with their investment contract, to act with transparency in its dealing with the host state. For example in the case of *Genin v Estonia*⁴⁶, the United States investor did not divulge that he was ultimate shareholder of the foreign parent Company that was investing in a branch of an Estonian Bank. Although the tribunal found that the Bank of Estonia’s banking supervision had acted in a manner that fell below generally accepted banking and regulatory practices in a number of respects, the investor’s failure to disclose his beneficial ownership entitled the Bank of Estonia to exercise its statutory discretion to revoke his operating licence.

⁴⁴ Key Terms and Concepts in IIAs: A Glossary, <http://www.sice-oas.org>, Accessed on 16th July, 2013.

⁴⁵ International Investment Agreements “Key Issues” Volume 1, <http://www.unctad.org>, Accessed on 16th July, 2013

⁴⁶ *Genin v. Estonia* ICSID Case No ARB/99/2.

However, in the Southern Region, Tanzania is one among them, there is the provision in the Sadc Model Bilateral Investment Treaty⁴⁷ which provides that an investor shall provide such information to an actual or potential Host State as that state party may require concerning the investment in question and the corporate history and practices of the investor, for the purpose decision making in relation to the investment or solely for statistical purposes.

In Zanzibar, most of the investors do not comply with this obligation because they are not disclosing their information on their projects. For instance, there are investors who entered the contracts of lease with the government to invest but they went to invest different from their contract, that's why the government decided to revoke their contracts. This happened because they first were not ready to disclose the true information about their projects.

2.4 Challenges of International Investment

The International Investment has faced with different challenges in their development and these challenges are caused due to the different development between the developed and developing countries. These challenges are differed according to the countries.

2.4.1 Challenges of investment in Nigeria.

Nigeria is a country which has succeeded in investment. It is renowned for her abundant mineral resources and her oil reserves have brought great revenues to her. In Nigeria, the various incentives that have been put in place to encourage investments are also reasons to consider and make investment in Nigeria.

⁴⁷ Sadc Model Bilateral Investment Treaty, Article 12, <http://www.iisd.org>, Accessed on 6th November, 2013.

Although, there are successes of investment in Nigeria, but there also have challenges in investing in Nigeria as shown by Hogan Lovells⁴⁸, are as follows:

(a) Bribery and Corruption

One of the Challenges faced by Nigeria in investment is corruption. Corruption is undoubtedly an issue to consider when investing in Nigeria. Corruption is practiced in all system of government. The authorities which dealing of investment in Nigeria are the one which are blamed for corruption.

Care should be taken to ensure that advisers and promoters do not in the interest of “getting the deal through” engage in corrupt practice.

(b) Slow Judicial System

It is a challenge in Nigeria that the court system is not as effective as one would have expected in the development of investment. Although State like Lagos State has put in place rules of court that seek to reduce the time spent in the resolution of investment disputes within certain monetary threshold, that system is still fraught with some inefficiencies and has not really achieved its purpose.

(c) Political Unrest and Security

Another challenge of investment in Nigeria is the activities of a group of fundamentalists in the Northern part of the Country and cases of kidnapping in certain parts of Southern Nigeria are issues to worry about. In investing Nigeria, adequate information regarding the existing security situation should be obtained at all time.

(d) Failure or lack of infrastructure

In Nigeria, it is a challenge that almost all parts of the Country have problems with steady power supply, inadequate housing, poor transport system and bad network of roads. For the investors to invest in Nigeria, it is to increase the comparative cost of investment.

⁴⁸ Lovells. Hogan, (march 2013), Foreign investments in Nigeria-Preliminary Legal Issues, <http://www.hoganlovells.com>, Accessed on 6th November, 2013.

2.4.2 Challenges of Investment in Tanzania

Tanzania is a country which has invited the foreign investors to invest. It is a country which blessed with different natural resources that the investors may choose their kind of investments. Although, Tanzania has succeeded in the investment but there are different of challenges that hinder the development of investment in Tanzania. According to John Mathew Mnali⁴⁹ presented the following challenges that face Tanzania in the development of investment, as:

(a)Lack of adequate power supply

It is a challenge in investment in Tanzania that there is lack of adequate power supply. In order to attract the foreign investors to invest in Tanzania, it is important for the government to assure that the power supply is obtained for the development of the country.

(b)Poor infrastructure especially (feeder roads)

Another challenge of investment in Tanzania is the poor infrastructure. Many of the roads nowadays are poor in condition, particular the rural roads. It is difficult for the investors to transport their minerals for their industries as well as the products from their industries.

In investment, it is important that the infrastructure to be good in order to attract the foreign investors to come to invest in Tanzania.

(c)Lack of designated areas for investment

Lack of the designated areas for investment is another challenge for investment in Tanzania; such areas are farming land and industrial plots. Most of the foreign investors who are coming to invest in Tanzania need land for investment. But the people invade these lands and the government fails to design those lands for investment. The people use those designated lands for keeping the livestock. Therefore in order to attract the investors, the government should arrange the designated lands for farming and industries.

⁴⁹ John Mathew Mnali, Presented in the Presentation on the Contribution of Foreign Direct Investment to the Local Economy in Tanzania, <http://www.tagla.go.ta>, Accessed on 5th November, 2013.

(d) Negative image of Africa by Western Media

Also there is a challenge of negative image from western media that there is no any development in the African Continent. There was a thought that the African cannot work and they like violence. Therefore it was difficult for the investors to come to invest in Tanzania because of those feelings. The western media was used to advertise bad to Tanzania that's why it was difficult for the investors to come to invest in Tanzania.

2.5 Conclusion

The above are the concepts of investment, the investors' obligations to their intended investment that the investors are supposed to do before or at the time of investing in the foreign countries and last, there are some of the challenges that the countries may face in the compliance of intended investment. Any developed and developing countries must have certain provisions in their laws which show either the obligations of the foreign investors or the host countries in investments. Some of those obligations are such as obligation to follow domestic laws of the host state, obligation not to engage in unconscionable conduct and obligation of transparency.

Not only in the laws of the countries but also in the international treaties, there are provisions which show the obligations of the host countries as well as the foreign investors.

CHAPTER THREE

DISCUSSION ON LAWS GOVERNING INVESTMENT IN ZANZIBAR

3.1 Introduction

The Government of Zanzibar has taken several efforts to reform its economy. The economy of Zanzibar was depending on cloves in the world market. From 1980's, Zanzibar has started to pass several laws in order to improve the economy of Zanzibar. Therefore from 1980's several laws concerning investments have been passed in the House of Representatives. The objectives of those laws are to push the modernization of investments' environments in Zanzibar.

Therefore, this chapter is to discuss the laws governing investment in Zanzibar and their challenges.

3.2 The Zanzibar Constitution, 1984.

The Zanzibar Constitution of 1984 was the first enactment of law in the aspect of investments in Zanzibar. During the time of the enactment of this Constitution, the Government of Zanzibar liberalized the economy and started to open up the gates for investors to move into and invest in Zanzibar.

The Zanzibar Constitution of 1984 was introduced with a chapter of Bill of Rights. On the issues of investments in Zanzibar, the Bill of Rights is very important to encourage the investors to invest. The investors use their money for investing their properties in Zanzibar, therefore the Bill of Rights are in the Constitution to protect the property of the people including the investors. For instance, Article 17 of the Zanzibar Constitution provides that no person shall be deprived of his property interest or right in that property except and upon compliance with certain conditions. Those conditions are:

- (a) The acquisition and occupancy of the property must be of utmost importance for defence and security of the people health requirement, town planning and any other development in the public interest,
- (b) The need to acquire the property in question must be absolutely important to the extent that it legalizes its acquisition even if it is to be to the detriment of its owner,
- (c) There must be in the existence of law in respect of which acquisition or occupation of the property provides for fair and adequate compensations.

Therefore, the aim of the above Article of the Constitution is to guarantee the rights by protecting the property of the people including the investors who are investing in Zanzibar. In addition to that, this Article was appended to the investment Act to attract the investors in Zanzibar.

3.3 The Land Tenure Act, No 12 of 1992 (REVISED)

The Land Tenure Act is one of the laws that an investor uses to hold the land for his/ her investments in Zanzibar. According to the Act, the power to distribute public lands which are under control of the Government by grants of right of occupancy or leasing the same is vested to the Minister responsible for land matters⁵⁰.

The Land Tenure Act restricts an investor to own the land in Zanzibar for investments. According to the interpretation of the Act⁵¹, the right of occupancy means the exclusive right to the use and occupation of land in accordance with the provisions of this Act. Only a Zanzibari has the right of occupancy of the land in Zanzibar as provided by the Act that the right of occupancy shall exist that the holder of the interest be Zanzibari over the age of eighteen.

⁵⁰ Section 3 of the Land Tenure Act No 12 of 1992.

⁵¹ Section 2 *ibid*.

The only chance that an investor has in investment in Zanzibar is to be leased the lands. The law allows a holder of the right of occupancy to lease his right of occupancy for a period not exceeding 49 years subject to renewal⁵². In case of public land the Minister may lease any public land to any person, a Zanzibari or non-Zanzibar, provide that the Minister shall not lease a public land which comprises a right of occupancy without the consent of the holder of such right of occupancy⁵³.

Therefore, subject to the approval of the investment by ZIPA or other relevant authorities, the Minister may lease any land to any person, Zanzibari or non Zanzibari intending to use that land for investment purposes⁵⁴.

In addition to the above section, it is going together with section 19 of the Zanzibar Investment Promotion and Protection Act No 11 of 2004⁵⁵.

But, there is a challenge that some of the investors decided to buy the lands from the local people contrary to the Land Tenure Act that provides the provision that the investors can lease the land and not otherwise. It is contrary to the laws of the country for investors to buy the lands from the villagers.

3.4 The Immigration Act, Chapter 54 (Revised), the Law of Tanzania

The Immigration Act is one of the laws which deals with the investment activities in Zanzibar. This Immigration Act provides for the control of immigration into the United Republic of Tanzania and for other matters relating to immigration.

⁵² Section 50(1) as amended by Section 9 of Land Tenure (amendment) Act No. 11 of 2010.

⁵³ Section 46(1) as amended by Section 5 ibidi.

⁵⁴ Section 46(3) ibid.

⁵⁵ Section 19 of the Zanzibar Investment Promotion and Protection Act, provides that "... the Authority shall make recommendations to the Minister responsible for land...and the Minister responsible for land shall take such recommendations into account in granting the lease.

When the investors need to do an investment business in Zanzibar, they should make the application to the Immigration department for getting resident and work permits. This is according to section 16 of the immigration Act which prohibits a foreigner to engage in paid employment under an employer resident in Tanzania, or for gaining or reward, to engage in any prescribed trade, business, profession or other occupation, or to commence any course of study at an educational institution in Tanzania unless he holds a permit known as resident permit.

Therefore, due to the above section, any foreign investor who needs to invest in Zanzibar should make the application for resident and work permits before starting investment activities in Zanzibar.

But the Immigration Act⁵⁶ contradicts with the Zanzibar Employment Act⁵⁷ at the issue of granting the work permit. Both Acts confer the power for granting the work permit to their heads. For Immigration Department, the powers are given to the Director of the Immigration while the Commission of Labour also is given power to grant the work permit. This is a challenge, because two institutions deal with the same issue and each institution has their own mandates concerning that issue.

3.5 The Environmental Management for Sustainable Development Act, 1996

The Environmental Management for Sustainable Development Act is another law which also deals with the investment activities in Zanzibar. Before the project of investment is granted the Certificate of approval, the investor should make the feasibility study concerning the impact of the environment of project he needs to invest in Zanzibar to the environment.

⁵⁶Section 16(1) of the Immigration Act, 1997 provides that “ No person shall engage in paid employment, under an employer resident in Tanzania except under a permit issued accordance with the provisions of this Act”

⁵⁷ Section 36(2) of the Zanzibar Employment Act provides that “There shall be a work permit for foreign employees which shall be issued by the Commissioner.

The Act provides the provisions which states that “no person shall undertake any activity which is likely to have a significant impact on the environment without an EIA certificate issued under the Act”⁵⁸

- (a) In addition to that the Act proceeds to state that “any person including a Government institution, who wishes to undertake an activity as specified under Proposed location(size of site, description, current uses, use of adjacent areas);section38 shall submit to the institution responsible for the environment a report stating concisely:
- (b) *The nature of activity;*
- (c) *The activities to be undertaken including a description of the production process, where applicable;*
- (d) *Quantities of raw materials and other inputs required, including water requirements and chemicals to be used;*
- (e) *The number of people to be employed;*
- (f) *Anticipated products and by products;*
- (g) *Anticipated waste products(solid liquid, gaseous),quantities of each proposed methods of treatment and disposal; and*
- (h) *Any other matters as may be prescribed”*⁵⁹.

Therefore, the above provisions of the Environment Management for Sustainable Development Act are used together with section 37 of the Zanzibar Investment Promotion and Protection Act of 2004 which provides that all investments made under the provision of the investment Act shall comply with the provisions of the Environmental Management for Sustainable Developments Act No 2 of 1996.

⁵⁸ Section 38 of the Environment Management for Sustainable Development Act No 2 of 1996.

⁵⁹ Section 39 of the Zanzibar Investment Promotion and Protection Act, No 11 of 2004.

3.6 The Zanzibar Investment Promotion and Protection Act, 2004

The most important investment law is the Zanzibar Investment Promotion and Protection Act of No. 11 of 2004. Section 3 of the Act, established an Autonomous Government Organ which is called Zanzibar Investment Promotion Authority (ZIPA). It is a body corporate with perpetual succession with a common seal and is capable in its name of suing and being sued, borrowing and lending money, taking purchasing, or otherwise acquiring, holding, charging and disposing of movable and immovable property. Also it is doing or performing all such other things or acts necessary for proper performance of its functions which may lawfully be done by a corporate.

The Zanzibar Investment Promotion Authority is a focal point for the promotion and facilitation of investments in Zanzibar. Its functions include maintaining liaisons between investor, Government and other authorities concerned with investment. Also it is responsible for administration, control and management of Freeport and Free Economic Zones and to carry out all such other acts as may be incidental or conducive to the attainment of the objectives of the Authority or in the exercise of its powers⁶⁰.

The Zanzibar Investment Promotion Authority is given powers to make rules for the purpose of ensuring the promotion and protection of investments in Zanzibar and these particular rules determine application procedures and criteria for approved enterprise and approved domestic enterprise status, procedures for providing the benefits accruing to approved enterprise and approved domestic enterprise, ensuring orderly development of Free Economic Zones and Free Port Zones in Zanzibar, determining the form of, and issue the certificates or licences to be issued, the time periods within which the Authority decides on whether or not to issue a certificates or licence and the procedure for amendment and revocation of such certificates or

⁶⁰Section 4 of the Zanzibar Investment Promotion and Protection Act, No 11 of 2004.

licences. Also it is given power to make the rules to determine rents, charges, dues or fees for any facilities provided by the Authority for the grant to any person of a licence, permit or certificate⁶¹.

But, the challenge is that the Authority(ZIPA) has been given powers to make rules as required by the Investment Act but unfortunately the Authority has not made the rules as per section⁶² provides it. This is hindering the development of investment in Zanzibar. Therefore, this has happened and caused the Authority not to have the recognized rules of investment in Zanzibar.

Also the Act gives the powers of the establishment of the Board of Directors⁶³. In discharge of its functions, the Board has the power to give lawful instructions to the Executive Director in the management, performance and operational policies of the Authority. Also it has a power to establish such organizational structure and work procedures as may be considered necessary for smooth discharge of the functions and responsibilities of the Authority. The Board, subject to the approval of Minister, has a power to determine the terms and conditions of service, salaries and other allowances including any other fringe benefits for the employees of the Authority. It has a power to set action plans objectives and appropriate work targets for each investment department and monitor its progress in achieving them on a continuous basis. On the other hand, it has power to determine the policy governing the operations of the Authority and lastly it has power to establish staff and financial regulations⁶⁴.

The Zanzibar Investment Promotion and Protection Act provides the provisions of applying for the certificates for approval. The investors both local and foreigners

⁶¹Section 5 of Zanzibar Investment Promotion and Protection Act, No 11 of 2004

⁶²Section 5 ibidi provides that “the Authority shall have powers to make rules as may be required for the purpose of ensuring the promotion and protection of investment in Zanzibar ...”

⁶³Section 6 of the Zanzibar Investment Promotion and Protection Act, No 11 of 2004.

⁶⁴Section8 ibidi

are supposed to apply for the certificate of approval for their enterprises and the Authority shall consider every application. After the Authority is satisfied with their application, it takes a decision on whether or not to issue a certificate and inform the applicant of its decision within the period prescribed in regulations made under section 37 of the Act⁶⁵.

Although, the Authority has the power of issuing the certificate of approval, but also the Authority may cancel and suspend the certificate of approval due to certain conditions, such as failing without reasonable cause to commence operations within the time stipulated in the certificate and failure to comply with any of the obligations imposed by the Act⁶⁶.

After the certificate of approval is granted to investors, the Authority is supposed to provide the benefits and incentives for foreign investors holding the certificate. The Authority shall facilitate the smooth transaction of all matters in connection with the issuance of the sectoral and other licences for the specific type of business, and the issuance of visas, work permits and other necessary formalities⁶⁷.

But, the whole process of granting the certificate of approval of enterprise has got system of bureaucracy. In Zanzibar, bureaucracy is the biggest challenge for the investor's compliance to intended investment. The aim of establishing ZIPA as the One Stop Central is to make all necessary needs obtained easily and quickly. Therefore this will help the process of obtaining the certificate of approval to be easily and quick but the Authority has failed and therefore bureaucracy still continue to exist in Zanzibar.

⁶⁵ Section 12(4) of the Zanzibar Investment Promotion and Protection Act, No 11 of 2004.

⁶⁶ Section 14 *ibid*

⁶⁷ Section 17 *ibid*

Also, the investor may employ non-citizens in what the Authority determines to be key positions for the duration of the certificate⁶⁸. Also where an investor requires the acquisition of land other than designated land in Freeport and Free Economic Zones, the Authority shall make recommendation to the Minister responsible for land on the appropriate land lease terms and conditions and the Minister responsible for land shall take such recommendations into account in granting lease⁶⁹.

In addition to that, any investor with approved enterprise or an approved domestic enterprise shall be entitled on application to the Authority to any tax incentives and allowances.

3.7 The Zanzibar Employment Act No. 11 of 2005

The Zanzibar Employment Act is another regime which deals with the investment activities in Zanzibar. The Employment Act provides the provisions which restrict the foreign investor to employ a non- Tanzanian in the investment areas. The Employment Act provides the provisions that no employer shall be permitted to employ a foreigner except that where no Tanzanian with the required qualifications is available for the post or where the vacant position is management position for which the employer is allowed to employ a person of his or her choice under the provision of the Zanzibar Investment Promotion and Protection Act, 2004⁷⁰.

However, there are certain circumstances that the Commissioner of Labour has power to refuse to issue a work permit to any foreigner as follows:

- (a) Where the applicant purports to be a foreigner investor but fails to prove that he or she is such an investor;
- (b) Where the applicant is a mere employee and the Commissioner is satisfied that such position may be filled by a citizen;

⁶⁸ Section 18 ibidi

⁶⁹ Section 19 of the Zanzibar Investment Promotion and Protection Act, No 11 of 2004.

⁷⁰ Section 36 of the Employment Act No. 11 of 2005.

- (c) Where it is proved that the applicant is employed by another establishment without the Commissioner being informed of the termination or expiry of his or her previous contract of service;
- (d) Where the Commissioner is satisfied that the applicant's qualifications are not compatible with the position for which the permit is applied for;
- (e) When the Commissioner is of the opinion that the establishment seeking to employ such a foreigner is incapable of paying his or her wages and other remunerations.
- (f) In such other circumstances that the Commissioner has every reason to believe that grant of work permit to the applicant is prejudicial to public interest⁷¹.

However, the above sections are used together with section 18 of the Zanzibar Investment Promotion and Protection Act No 11 of 2004 which requires that the investor may employ non-citizens in what the Authority determines to be key positions but with exception that every investor shall in respect of employment give priority to Zanzibaris.

3.8 The Zanzibar Tourism Act No. 6 of 2009

Another regime is the Zanzibar Tourism Act No. 6 of 2009 which repealed the Promotion of Tourism Act No. 9 of 1996. This Act established the Zanzibar Commission for Tourism as an autonomous body corporate whose functions and powers as provided by the Act⁷² includes to implement tourism policy and master plan of Zanzibar; to promote, assist and facilitate the efficient development and marketing of sustainable tourism industry; to promote and develop cultural and eco-tourism; to facilitate preservation of tangible and non tangible heritage; to plan and direct tourism in a manner which is in conformity with the overall government development policy and strategies; to promote and coordinate the public and private

⁷¹ Ibid Section 40 of the Zanzibar Investment Promotion and Protection Act, No 11 of 2004

⁷² Section 4 of the Zanzibar Tourism Act No. 6 of 2009.

sectors engaged in tourism business and to conduct activities which will promote domestic, regional and international tourism.

In addition to the above functions, other functions of the Commission for Tourism are to register, issue licence, regulate and supervise tourism business; to change, suspend, alter or cancel licences issued in accordance with the Act; to classify and categorise enterprises which carry on tourism business; to hear and investigate complaints related to tourism business; to monitor institutions which carry on tourism business; to promote Zanzibar as a tourism destination; to diversify and upgrade tourism products so as to attract up market tourism; and to coordinate efforts of all institutions within the tourism industry and between tourism and other sectors of the economy at all levels regional, national and international.

Furthermore, in tourism industry no person shall run or carry on a tourism business unless he/she holds a licence issued by the Commission. The Director General of the Commission shall issue a licence to any person who is engaged in tourism business after fulfillment of all terms and conditions specified under the Act⁷³.

3.9 Convention on International Centre For Settlement of Investment Disputes (ICSID)

The International Centre for Settlement of Investment Disputes (ICSID or the Centre) is established by the Convention on the Settlement of Investment Disputes between States and Nationals of other states.

The Convention was formulated by the Executive Directors of the International Bank for Reconstruction and Development (the World Bank). The Convention entered into force on 14th October, 1966.

⁷³ Section 15 of the Zanzibar Tourism Act No. 6 of 2009.

The International Centre for Settlement of Investment Disputes is not an International Court or Tribunal but merely provides an institutional framework that facilitates conciliation and arbitration. The actual settlement of disputes takes place mainly through arbitral tribunals that are constituted on an ad hoc basis for each dispute.⁷⁴The purpose of ICSID Convention as expressed in its preamble is to stimulate economic development through the promotion of private International Investment⁷⁵.

In addition to that, according to the provisions of the Convention, ICSID provides facilities for conciliation and arbitration of investment disputes between Contracting states and nationals of other contracting states⁷⁶.

The United Republic of Tanzania is a member country which signed and ratified the Convention on International Centre for settlement of Investment Disputes. Zanzibar as a part of the United Republic of Tanzania also uses the Convention to settle out the disputes in the international investment.

The challenge is that the Convention on International Centre for settlement of Investment Disputes was ratified by the Government of United Republic of Tanzania and it is difficult for Zanzibar alone to file their investment disputes to the ICSID because they are not known as the country. This situation is difficult for Zanzibar because on the issue of investment, the Government of Zanzibar has its own laws.

3.10 Conclusion

The issue of investments has been explained in many laws in Zanzibar. Starting with the Constitution of Zanzibar as we have seen there are provisions which talk

⁷⁴ <http://www.univie.ac.at>, Accessed on 14th April, 2013.

⁷⁵ <http://www.univie.ac.at/intlaw/wordpress/pdf/100icsid>, Accessed on 14th April, 2013.

⁷⁶ <https://icsid.worldbank.org>, Accessed on 14th April, 2013.

about the rights of the persons including the investors. Also the laws of the different sectors try to explain about investment from one way to another in Zanzibar. Such laws are Employment Act, Land Tenure Act, Immigration Act, Tourism Act, The environmental management for sustainable development Act.

Also, Zanzibar is a part of the United Republic of Tanzania; uses the conventions for settling the investment disputes in Zanzibar.

CHAPTER FOUR

RESEARCH FINDINGS AND ANALYSIS

4.1 Introduction

After the collapse of cloves in the world market, the Government of Zanzibar started to take effort to liberate their economy. These efforts of the Government started during 1980's and it started to open up the gates for investors, both internal and external to move into and invest in Zanzibar economy.

Therefore, the main economic reforms programs adopted since mid-eighties includes the enactment of the Private Investments Promotion and Protection Act, 1986, the formation of the Zanzibar Investment Promotion Authority (ZIPA) 1991; Establishment of the Commission for Tourism in 1992; Adoption of Free Economic Zone Authority in 1992 and establishment of Free Port Authority in 2000. Also a number of policies and plans were adopted to address to the development of the Zanzibar economy.

The Tourism sector is one among the sectors that the Government of Zanzibar gives priority to the development of investment in Zanzibar. It is the lead sector in the development of investment in Zanzibar. Nowadays, there are a number of foreign and local investors engaging in the tourism sector for investment in Zanzibar.

According to figures compiled by the Commission for Tourism, there are currently 173 tourist accommodation establishments in Zanzibar, with a total of 3,089 rooms and 6,139 beds. The great majority are located in Unguja. Outside the hotels, there are approximately twenty restaurants of International standard with several new high quality establishments opened in Stone Town in the past few years.⁷⁷

⁷⁷. Tourism Policy Statement, <http://www.tourism> policy statement, Accessed on 26th July, 2013.

In addition, there are 128 licensed ground tour operators and diving units. Despite the large number of licensed operators, this sector is dominated by a comparatively small number of major companies, which account for the bulk of the business⁷⁸.

There are also a very large number of tour guides- both official and unofficial. Some 325 tour guides have been licensed by the Commission for Tourism of whom sixty or so are members of the newly- formed Zanzibar Tourist Guides Association (ZTGA).

In addition, there are others acting unofficially, or posing as, tour guides, some of whom appear to have come into possession of official tour identification badges⁷⁹.

However, according to the Commission for Tourism report of 2011 which discussed the tourism situation in Zanzibar shows the statistics of the arrival of the tourists in the end of 2011. But the following table shows the arrival of tourists in Zanzibar from only four countries. Those statistics are as shown in the table below as follows:

Table 4.1: Top 4 Source of markets to Zanzibar.

S /N	Country of Residence	Visitors	% of Total
1	Italy	53,104	25.1
2	United States of America	21,515	21.5
3	South Africa	19,607	13.1
4	United Kingdom	15,300	10.2
5	Others	58,698	31.1
	Total	168,223	100.0

Source: Commission for Tourism, Zanzibar.

⁷⁸. *ibid*

⁷⁹. INDICATIVE TOURISM MASTER PLAN FOR ZANZIBAR AND PEMBA, <http://www.zanzibartourism.net>, Accessed on 31st July, 2013.

According to the table above, it shows that Italy takes the lead by bringing about 25.1 percent of the visitors, followed by the United States of America (21.5 percent). The advantage of Italy to take the lead is largely associated with the existing Italian hotel establishments in Zanzibar coupled with direct chartered flights from Italy. Likewise the increase of the visitors from South Africa is largely explained by the launching of One Time Air which flies directly from South Africa to the island three times a week. But, if compared with the neighboring islands such as Mauritius and Seychelles, the above table shows the growth of arrival of tourists in Zanzibar is low.

Furthermore, this research revealed that the arrival inflows of tourists concentrated basically in South and Urban West in Unguja, which implied that the referred regions have relatively requisite investments attractions and facilities. Also the Revolutionary Government of Zanzibar has already upgraded the social-economic infrastructure of such regions such as seaport, airport, power and financial services to attract investors and tourists.

Moreover to that, during the year of 2010 to march, 2013, a total of forty seven investment projects which deal with tourism activities have been approved to invest in Unguja and most of them are engaged in the business of hotels and restaurants as shown in the table below:

Table 4.2: Approved Tourism Projects from 2010 to 2013 in Unguja

S /N	Projects Name	Industry	Location
1	Jatropha Zanzibar Limited	Hotels and Restaurants	Chwaka
2	Swahili Cruises	Tour Operation/ Diving & Game Fishing	Stone Town
3	Mystic Palace Adventure Project	Hotels and Restaurants	Chuini
4	Jumeira Holding Limited	Hotels and Restaurants	Michamvi
5	Unicom Resort Limited	Hotels and Restaurants	Bwejuu-Dongwe
6	Boutique Hotel Matlai	Hotels and Restaurants	Michamvi
7	Zanzibar Seashell Hotel	Hotels and Restaurants	Mlandege
8	Mizingani Sea Front Hotel	Hotels and Restaurants	Shangani
9	Zanzibar Speedway Limited	Hotels and Restaurants	Fumba
10	Matemwe Beach Hotel Limited	Hotels and Restaurants	Matemwe
11	Mandhari Villa Matemwe Limited	Hotels and Resaturants	Matemwe
12	Karr Capital For Watling Properties Limited	Hotels and Restaurants	Maisara
13	Maisha Mazuri Limited	Hotels and Restaurants	Mangapwani
14	Abbyssiniani Maritim Ethiopian Cuisive	Hotels and Restaurants	Shangani
	Zageo	Tour	Jambiani

15		Operation/Diving& Game Fishing	
16	Index Group-Matemwe	Hotels and Restaurants	Matemwe
17	Kichakani Entertainment	Hotels and Restaurants	Nungwi
18	Farasi Co. Ltd	Hotels and Restaurants	Michamvi
19	Marasa Beach Resort Limited	Hotels and Restaurants	Bwejuu
20	Kolle House Limited	Hotels and Restaurants	Malindi
21	Venus Beach Hotel	Hotels and Restaurants	Dongwe
22	Parklane Holdings Zanzibar	Hotels and Restaurants	Malindi
23	Blu Marlin Village Limited	Hotels and Restaurants	Kiwengwa
24	Stone Town Invest	Hotels and Restaurants	Nungwi
25	Zanzibar Invest Group	Hotels and Restaurants	Mkokotoni
26	Zamani Palace Zanzibar	Hotels and Restaurants	Shangani
27	Pumzika Beach Resort	Hotels and Restaurants	Makunduchi
28	Barkez Palace Limited	Hotels and Restaurants	Bwejuu- Dongwe
29	Kaure Send Limited	Hotels and Restaurants	Uroa
30	Arena Resort & SPA(Morogoro Mashana Company)	Hotels and Restaurants	Bwejuu
	Mare Village Zanzibar Ltd	Hotels and	Michamvi

31		Restaurants	
32	Coconut Hotel	Hotels and Restaurants	Uroa
33	Michamvi Golf & Resort	Hotels and Restaurants	Michamvi
34	The Rihla	Hotels and Restaurants	Kwale Island Fumba
35	Zanzibar Paradise International Hotel	Hotels and Restaurants	Aman Stadium
36	Diving Poseido Co. Ltd	Tour Operation/Diving & Game Fishing	Nungwi
37	Akb Zanzibar Limited	Hotels and Restaurants	Jambiani Kibigija
38	Indigo Boutique Hotel	Hotels and Restaurants	Kizimkazi
39	Mc Pippo's Italian Restaurants	Hotels and Restaurants	Kiembe Samaki
40	Awd Limited	Hotels and Restaurants	Chukwani
41	Hestia Beach Hotel	Hotel and Restaurants	Bububu (Chuini)
42	Kisiwa Hotel and Resort Ltd	Hotels and Restaurants	Paje
43	Tiki Tam Palm Hotel	Hotels and Restaurants	Pongwe- Madudu
44	Al Kalaa Restaurents	Hotels and Restaurants	Kiembe Samaki
45	Teddy's Place Paje	Hotels and Restaurants	Paje
46	Sunshine Retreat Limited	Hotels and Restaurants	Kijini Matemwe
47	Verani Beach Hotel Ltd	Hotels and Restaurants	Tondooni- Verani

Source: Department of Statistics, Information and Data in ZIPA

However in this chapter the researcher presents the findings of the study as per the data collected through questionnaires and interviews. The essence of the study is to look whether the legal framework on investment is effective for the investors to comply with it or not, hence the data presented here reflects the views of the respondents concerning the research question.

4.2 Responses from Questionnaires

For the purpose of accomplishing this study, the researcher used two types of data collections methods; the first one involve the secondary data collection in which various text books, pieces of legislations, research reports relevant to the topic were consulted. But on the other hand the study used the primary data collection method through which interviews and questionnaires were used to facilitate the acquisition of some information relevant to the study.

Under this particular chapter the researcher presents the outcome of the questionnaires which he had distributed to various investment stakeholders. This includes the officers of ZIPA and Commission for Tourism. Also, some few questionnaires were given to the members of ZATI and ZTGA.

In this study, the totals of sixteen (16) questionnaires were distributed and six (6) people were interviewed. However, all the questionnaires were returned back to the researcher after being filled up which is equivalent to 100%. This means to a large extent, the study was successful in collecting and getting information as it was intended.

Pertaining to the question which was intended to know about the effectiveness of the legal framework on investment in Zanzibar, all sixteen (16) respondents making 100% of the returned questionnaires seems to agree that there is a weakness of legal

framework on investment. Since this sample of the respondents represents the group of officers of ZIPA and Commission for Tourism, members of investment associations who all dealing with investment activities.

Regarding to the question of whether there are grounds than legal framework on investment that hinder the investors to comply with their intended investment, eleven (11) respondents which is equivalent to 68.75% they mentioned the disputes in the society particular land disputes made the investors failed to comply with their intended investment.

Apart from the above answers, also there are six respondents which equivalent of 37.5% mentioned other grounds which make the investors have failed to comply with their intended contracts and they knew it because they are working with the investment companies.

4.3 Responses from Interviews

In this study apart from questionnaires; interviews were also used as a means of data collection. The responses from interviews were: concerning the question whether legal framework on investment is effective for the investors to comply with the intended investment; one lawyer from private firm and one lawyer from state attorney, have the opinion that there is a weakness of legal framework on investment in Zanzibar. Numbers of reasons were given to support their answer; like: the laws governing investment contradict themselves and government (Authority) do not follow the laws which they have passed themselves because the investment law provides the provision that the Authority to make the rules of the procedures of applying to invest but till today they have not been made.

But one of the respondents who is investor claimed that why till today the government has no harmonize the East African laws particularly those which concern with the employment on the investment sector.

Moreover the issue of bureaucracy and corruption also was claimed by the stockholders like members of investment associations and the government be advised to amend the Anti Corruption Act, which is outdated.

Therefore, the challenges faced by ZIPA in ensuring investors' compliance to intended investment are as follows:

4.4 Weakness of the Legal Frameworks in Zanzibar

This study has found that, there is weakness of the legal frameworks in Zanzibar. In the issue of investment activities, there are different legal frameworks which govern the investment activities in Zanzibar. These are laws like Zanzibar Investment Promotion and Protection Act, 2004, The Environmental for Sustainable Development Act, 1996, The Employment Act, 2005, Land Tenure Act, 1992, The Immigration Act, Cap 54 (RE: 2002) The Tourism Act and The Land Transfer Act.

Also this research revealed that most of the laws are contradicting each other that are why they cause the weakness of these in the whole process of investment in Zanzibar and this weakness of the legal frameworks in Zanzibar causes the investors not to comply their investment contracts.

The laws are silence as to when the investors were found not to comply with their investment contracts and sometimes in their investment contract. There is no clause which shows the step to be taken when found that the investors do not comply with their investment contracts. For example, the investors of Venta Clubs which is located in Northern region, Unguja left Zanzibar after they found that their hotel or

club had huge debts from their workers and from the indigenous people who sent them the needs (like food) for the hotel.

After ZIPA received the claims from the workers of the hotel and indigenous people, they tried to make a follow up to trace them from their country (Italy), they did not find them but they found that their addresses were wrong from their country and they did not have the addresses. To this, the workers and the indigenous people did not know what actions could be taken and against whom. Therefore, this happened because of the weakness of the legal frameworks on investment in Zanzibar. But according to the lawyer of ZIPA, the government of Zanzibar is thinking to file a suit against them (with non appearance of Investors of Venta Club) and to pray the Court to deliver the order to attach property (buildings) of the Club in order to pay the debts to the workers and indigenous people.

Also, since Zanzibar have different laws governing investment activities and they sometimes cause the contradiction in their practice, therefore this shows that the Zanzibar legal framework on investment is weak. A good example whereby the Employment Act provides the provision that the Commissioner of Labour is given powers to grant the work permit to the foreigner (Investor) and also the Director of Immigration is given the same by the Immigration Act. Therefore, due to that contradiction of the two laws which provide the same issue, this also shows that the legal framework on investment has the weakness in practice and that is why it leads the investors fail to comply with the laws of their investment contracts in Zanzibar.

4.5 Bureaucracy and Corruption in the Government Institutions

A new Act has formed ZIPA as a One Stop Centre. It is a focal point to facilitate and promote the investment and trade in Zanzibar. Due to this concept of ZIPA as a One Stop Centre, it simplifies the investors to obtain what they need in the same building and within a short time. The One Stop Centre makes together other

institutions with ZIPA in the same building. There are Institutions like Commission for Labour, Commission for Land, Tanzania Revenue Authority and Immigration department in ZIPA building.

But the study has found that several investors have been claiming on the bureaucracy and corrupt practice in the Government Institutions in the development of investment in tourism sector in Zanzibar. The process of the investors to obtain the certificate of investment is hindered by the system of bureaucracy because of the laws governing investment in Zanzibar. The Employment Act⁸⁰ provides the provision that the Commissioner of labour is given powers to grant the work permit to the foreigner (investor), but at the same time the Director of the Immigration also is given powers by the Immigration Act⁸¹ to grant the residence and work permit to the foreigner. Therefore these two laws contradict the favourable intended investment in Zanzibar. Also this causes the bureaucracy in the process of investment in Zanzibar and it hinders the development of investment in Zanzibar because it contributes the rise of corruption in investment sector. The Revolutionary Government of Zanzibar is advised to overcome this challenge for smooth development of foreign direct investment.

Also on the issue of Land, there are several Land Laws that govern the investment in Zanzibar. The tourism sector is among the sectors of investment which needs lands in the investment in Zanzibar. Most of the tourism investors have built hotels or leased the buildings. But the process of obtaining lands for investment in Zanzibar is surrounded by the bureaucracy because there are different land laws which govern the investment in Zanzibar. For instance, there are Land Tenure Act, Land Transfer Act and the Investment Act. These laws contradict the investors with their intended investment because it causes bureaucracy and corruption in the whole

⁸⁰Section 36(2) of the Employment Act No. 11 of 2005 provides that “There shall be a work permit for foreign employees which shall be issued by the Commissioner”.

⁸¹Section 16(1) of the Immigration Act , Cap 54 (RE:2002) provides that “No person shall engage in paid-employment, under- An employer resident issued in accordance with the provisions of this Act”

processes of investment in Zanzibar. To avoid the bureaucracy and corruption in application of land lease in investment is the Government of Zanzibar is to amend and have one law of land.

On the other hand, bureaucracy can be seen in section 48 of the Land Tenure Act 1992⁸² which allows a termination of any lease of public land (Government lease) if the holder of such lease failed to complete developing the leased land within a period of thirty months from the date of being granted the lease. To this effect, there is a contradiction between section 19(2) of the Zanzibar Investment Promotion and Protection Act 2004 and section 48 of the land Tenure Act 1992. Under the Zanzibar Investment Promotion and Protection Act, if the Minister responsible for land is satisfied with grounds for failure to complete development within time is not a breach of term of lease, but under section 48 of the land Tenure Act 1992 satisfaction of the Minister is not an issue and a lease may be lawfully terminated. Therefore this bureaucracy causes corruption in the whole system of investment and therefore the investors have failed to comply with their investment contract because of the bureaucracy and corruption.

Therefore, this is a challenge for ZIPA in ensuring the investors comply with their intended investment because of the bureaucracy and corruption in the government institutions in Zanzibar.

4.6 Failure of the Government to harmonize East African laws

Investment in any country is the area which includes the opportunity of employment. Through investments, the investors may employ the workers either local or foreigners depending on the need of their projects. Here, in Zanzibar the issue of employment in investment is provided by laws of Zanzibar, such as the

⁸² As amended by section 7 of the Land Tenure (Amendment) Act no. 11 of 2010.

Zanzibar Investment Promotion and Protection Act⁸³ and the Zanzibar Employment Act⁸⁴.

The study revealed that there are a number of people from other countries of East Africa like Rwanda, Kenya and Uganda have entered in Zanzibar to find jobs in the investment areas, particularly in the tourism sector. These people have come under the umbrella of East African Community. The East African Community has established what they call Common Market. This common market enables the people from one country of East African region to move to another country of the same region to find jobs without any restriction⁸⁵.

The Common Market Protocol allows workers from any partner state to accept employment within any other East African Countries. They cannot be discriminated against on the basis of their nationality⁸⁶. But, the Common Market Protocol was not ratified by the House of Representatives in Zanzibar and the investors of tourism industry, through the common market of East African Community continue to employ the foreign workers or expertise in Zanzibar.

Without given specific data from the Commissioner of labour, the Commission of Labour assured that there is a huge number of increase of people from this zone of East Africa to find the jobs in the investment companies in Zanzibar.

The challenge faced by ZIPA and other Government institutions is that which laws are supposed to be followed to grant permission to employ foreigners in the investment companies (in tourism industry). The East African Community, through the protocol of common market, wants the people of East Africa to be employed

⁸³ Section 18 of the Zanzibar Investment Promotion and Protection Act No 11 of 2004.

⁸⁴ Section 36 of the Employment Act No 11 of 2005.

⁸⁵ Part D, Article 10(1)(2) of the East African Community Common Market Protocol, <http://www.eac.int>, Accessed on 4th August, 2013.

⁸⁶ <http://www.commonmarket.eac.int>, Accessed on 4th August, 2013.

freely without any disturbance. The Government of Zanzibar has not ratified the protocol of Common Market of East African Community, but the investors want to employ the foreign workers without following the laws of Zanzibar.

When this happens, it leads the investors not to comply with the laws of investment in Zanzibar in the issue of employment. Some of the investors, by knowing that there is a protocol of common market, they take the expertises to employ in their companies without following the law of the host state (Zanzibar) because Zanzibar has not ratified that protocol. Therefore, this is a challenge faced by ZIPA in ensuring investors' compliance to intended investment in Zanzibar because some of the investment laws are not harmonized from East African laws in Zanzibar. Due to the globalization, there is a need of some of the laws to be harmonized in order to simplify the investment activities in Zanzibar and it will help the investors to comply with the laws of the host state.

Failure to harmonize the laws of East African community, Zanzibar will be back in the development of investments in East African Community because the investors do not comply with the laws of investment of the host country.. It is important for the Government of Zanzibar to harmonize the laws of East African Community in order to attract the investors to invest in Zanzibar.

4.7 Absence of Legally Recognized Rules of Investment

This study also has revealed that there is the absence of recognized rules of investment in Zanzibar. Section 5 of the Zanzibar Investment Promotion and Protection Act 2004 provides that the Zanzibar Investment Promotion Authority is given powers to make rules in particular rules to determine application procedures and criteria for approved enterprise and approved domestic enterprise status; procedures for providing the benefits accruing to approved enterprise and approved domestic enterprises; and ensuring orderly development of Free Economic Zones

and Free Port Zones in Zanzibar. It has also powers of determining the form of, and issue the certificates or licenses to be issued under the Act, the time periods within which the Authority shall take a decision on whether or not to issue a certificate or licence and the procedures for amendment and revocation of such certificates or licences; and to determine rents, charges, dues or fees for any facilities provided by the Authority or for the grant to any person of a licence, permit or certificate. Unfortunately, to date there are no legally recognized rules of procedure for facilitating investment in Zanzibar.

But when the researcher went to the field, he has found that there is not any legally recognized rule made by the Authority as required by the Act. This is a challenge faced by ZIPA in ensuring investors' compliance to intended investment. What the Authority has, is only the draft and they are not recognized as the legal rules. Because of failure to make recognized rules, it may cause the investors do not comply with the laws of the host state. If there is not any rule which shows the criteria which enables the investors to invest in Zanzibar that is a challenge for investment activities in Zanzibar.

Therefore, the Authority has to make sure that they have the recognized rules as required by investment Act in facilitating and promoting investments in Zanzibar. Without of having recognized rules, it leads the investors to fail to comply with their investment contracts and this hinders a good intention of the Government of attracting the investors.

4.8 Disputes within the society

The society is a part of investment in a country and without them the investment projects cannot succeed in their development. But, there is a rise of disputes in the society, either between the society and the investors or between the societies

themselves. To some extent, these disputes in the society contribute the investors failing to comply with their intended investment contracts.

ZIPA has the objective of facilitating and promoting the investments in Zanzibar. If there is a dispute in the society and that dispute is concerned with the investors, that dispute leads the failure of ZIPA in facilitating and promoting the investment in Zanzibar. This is because the intended investment cannot develop its project and then the investor decides to return to his home country.

For instance there is investment project of Maisha Mazuri Ltd which dealing with hotels and restaurants in the Mangapwani village in the Northern region, Unguja island. This project till today cannot start its work because there is a dispute between the investor and the people of the village. Their dispute is before the Land Tribunal in Zanzibar⁸⁷. Their dispute is about the land whereby the villagers first leased their land to the Maisha Mazuri Ltd and Maisha Mazuri Ltd could not develop that land for three years. Due to the failure of development of that land, the villagers decided to lease that land to another investor. But when the second investor decided to develop that land, the investor of Maisha Mazuri Ltd appeared and he claimed the land possessed by them. Therefore due to that dispute, the investment company cannot proceed to comply with their intended investment contract.

Therefore, this is a challenge faced by ZIPA in ensuring investors' compliance to intended investment in Zanzibar. To avoid this challenge, ZIPA has to educate the society the important of the investments and the investors in our country either through medium or seminars.

⁸⁷ Maisha Mazuri Ltd Vs Shaaban Sarboko and others, Zanzibar Land Tribunal, Civil Case No. 67/2011 (still pending).

4.9 Conclusion

The Government of Zanzibar has taken several steps to make good environment to attract the foreign investors to invest here in Zanzibar, in particular in the tourism sector. The Government has tried to make different laws in the attraction of the investors to invest in Zanzibar. There are laws like Employment Act, Tourism Act, Land Tenure Act, Land Transfer Act, Immigration Act, and Zanzibar Investment Promotion and Protection Act.

Although there are several laws for investment and tourism, insufficiency of such laws is claimed to be a challenge. Thus, there still exist bureaucracy and corruption in the Government institutions for implementing the laws, failure of the government to harmonize the investment laws, weakness of the whole legal framework on investment and absence of legally recognised rules of investment. These are still challenges to the investment sector in Zanzibar.

CHAPTRE FIVE
SUMMARY, CONCLUSION AND RECOMMENDATION

5.1 Summary

During the years of 1980's the government of Zanzibar started to reform its economy after the collapse of the market of cloves in the world market. Therefore, the government of Zanzibar established the Zanzibar Investment Promotion Authority after it passed the investment Act in 1996 (as amended in 2004).

Generally, the establishment of the investment sector was seen as the liberation of the economic development, modernization and employment generation of the people of Zanzibar. Zanzibar has engaged itself in investments in particular knowing the importance of the same in improving the welfare of Zanzibaris. However, any place whereby there is success, there must have been challenges to reach that success. Therefore this particular study aimed at assessing the challenges faced by ZIPA in ensuring investors' compliance to intended investment.

However, this study has revealed various challenges faced by ZIPA in ensuring investors' compliance to intended investments. The laws governing investment activities have made the legal contradictions when the investors need to apply for the legal requirements to invest in Zanzibar. Also the study has revealed other handicaps available that hinder the investors to comply with their intended investment.

5.2 Conclusion

Zanzibar are the islands which surrounded by sea. Zanzibar was depending on cloves in its economy and they earned the foreign currency due the production of the cloves. But during the years of 1980's, the production of cloves had started to collapse in the world market and it was the beginning of the Zanzibar Government to start to reform its economy in order to save the economy of the country.

Therefore, the Zanzibar Government established the Zanzibar Investment Authority in 1990's and their object was to serve the economics of Zanzibar. The law of investment was amended in 2004 and it gives powers to ZIPA of facilitating and promoting investment and trade in Zanzibar. However there are a lot of challenges faced by the Zanzibar Investment Promotion Authority in facilitating and promoting investment in Zanzibar. Some of these challenges are as failure of the government to harmonize East African laws, there is the absence of legally recognized rules, weakness of the legal frameworks on investment and bureaucracy and corruption.

5.3 Recommendation

Following the above summary and conclusion, the following step is recommendation and it is therefore recommended as follows:

- (a) The recognized rules of investment should be put in place, particularly rules of procedures. Section 5 of the Zanzibar Investment Promotion and Protection Act, 2004, the Zanzibar Investment Promotion Authority is given powers to make rules in particular rules to determine application procedures and criteria for approved enterprise and approved domestic enterprise status, determine procedures for providing the benefits accruing to approved enterprise and approved domestic enterprises, ensure orderly development of Free Economic Zones and Free Port Zones in Zanzibar, determine the form of, and issue the certificates or licences to be issued under the Act, the time periods within which the Authority shall take a decision on whether or not to issue a certificate or licence and the procedures for amendment and revocation of such certificates or licences and determine rents, charges, dues or fees for any facilities provided by the Authority or for the grant to any person of a licence, permit or certificates.
- (b) But till to date, there are no recognized rules of procedures for facilitating and promoting investment in Zanzibar. Fortunately, in practice ZIPA has developed administrative rules in facilitating and promoting investment. Lack of

recognized rules hampers investors as it invited corruption. Therefore the Revolutionary Government of Zanzibar should ensure that these recognized rules of procedures are put in place.

- (c) Corruption is a widespread problem in Zanzibar. This problem affects various sectors in Zanzibar and it hinders economic development, the investment sector inclusive. However, due to its nature and how it is practiced it is extremely difficult to have a watertight evidence to prove it. However, there are certain practices to some extent which are signs and clues to corruption in the granting permit for investing. Therefore, the Government of Zanzibar should amend the Anti Corruption Act in order to fill all gaps in order to avoid the officials of the government to take bribes and this will improve the investment in Zanzibar.

- (d) The Government of Zanzibar should reset “One Stop Centre” for investment. The object of the Government to establish One Stop Centre was to enable all needs of investment to be completed on one desk and in the same building. But unfortunately, the object of establishing the same has not been achieved. The investors have to walk from one office to another and each office has different procedure of acquiring the required permit. Also it takes long time for the investors to obtain the Certificates of investment in Zanzibar. It was said that it takes more than six months for the investors to obtain the Certificate of investment. Compare with Rwanda, it takes twenty four hours to obtain an investor certificate⁸⁸. Therefore there is a need to create conducive environment of saving time and money in acquiring required permit for investment.

- (e) The Government of Zanzibar should review and amend all laws which dealing with the investment activities in order to solve the problem of investors to fail to comply with their intended investment. Nowadays in Zanzibar, there are

⁸⁸ One Stop Centre, <http://www.rdb.rw/onestopcentre.html>, Accessed on 20th November, 2013.

provisions in different laws which explain the same issue at the same time and this causes contradiction in the interpretation and it leads the investors to fail to comply with their intended contracts. In order the environment of investment to be attractive for the foreign investor to invest in Zanzibar, the Government of Zanzibar should have only one law dealing with all investment activities in Zanzibar. This will help the investors to comply attentively with their intended investment contracts.

- (f) The current practice of representing people in the House of Representative does not comprise large number of people in the society. The government has to reform the legislation procedure so that to get the exact people's opinion concerning the investment at large. In other words, the government should involve the people in the formulation of investment policy and investment laws as well.
- (g) Due to the union of the East African Countries, there is a need of harmonization of the investment laws in Zanzibar. The East African Community has what they call protocol of common market. But the government of Zanzibar has not ratified that protocol. Therefore in order for Zanzibar to enter to the market of East Africa, the government should ratify the protocol of the common market and then passes the laws. This is very important to compete with the other countries of East Africa in investment as a part of economic. Therefore, the Government of Zanzibar should also harmonize its laws in order to cope with the environment of investment in East Africa.
- (h) Unlike the land disputes which are triable before the Land Tribunal, other investment disputes are triable before the High Court of Zanzibar. But it is recommended that special court dealing with commercial disputes has to be established for the purpose of handling and speeding of investment disputes.

Recently, the law was passed to establish the Commercial Court in Zanzibar, therefore it is the right time for the Government to appoint the judges to hear and determine the cases including cases from the investment disputes.

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APPENDICES

APPENDIX 1: COPY OF QUESTIONNAIRES FOR THE LAWYERS

This research is about critical assessment of challenges faced by ZIPA in ensuring investors' compliance to intended investment. The researcher through these questionnaires seeks to investigate and collect in depth information on the effectiveness of the laws in force in Zanzibar concerning with the investors' compliance to intended investment in Zanzibar.

It is hoped that you will provide maximum cooperation in answering the questions in this questionnaires which will at the final stages produce the required information.

Personal details:

- a) Name
- b) Post
- c) Duties

1. (i) Have you ever worked with any investment company?

Yes () No ()

(ii) If yes, mention the name of the company

.....

.....

(iii) Please mention the date that it has been granted approval

.....

.....

2.(i) Do you know the laws governing the investment activities in Zanzibar?

Yes () No ()

(ii) If yes please mention some of them

.....

.....

3. (i) Have you found any contradiction in following those laws which governing investment activities in Zanzibar?

Yes () No ()

(ii) If yes, explain shortly how

.....

.....
4. (i) When you have worked with the investment company, you found that there are other handicaps that hinder the investors to comply with their intended investments in Zanzibar.

Yes () No ()

(ii) If yes, specify those handicaps available that hinder the investors to comply with their intended investment

.....
.....
(iii) What are your suggestions

.....
5. (i) As a lawyer, do you think that ZIPA has absolute power to ensure that the investors' compliance to intended investment?

Yes () No ()

(ii) If yes, explain how

.....
(iii) If no, explain why

.....
APPENDIX II: COPY OF THE QUESTIONNAIRES OF THE OFFICIALS FROM ZIPA.

This research is about critical assessment of challenges faced by ZIPA in ensuring investors' compliance to intended investment. The researcher through questionnaires seeks to investigate and collect in depth information on the effectiveness of the laws in force in Zanzibar concerning with the investors' compliance to intended investment in Zanzibar.'

It is hoped that you will provide maximum cooperation in answering the questions in this questionnaires which will at the final stages produce the required information.

1. Are you working in Zanzibar Investment Promotion Authority?

Yes () No ()

2. If yes, mention your names and your post

3. Do you remember how many new investors have passed in your office per a year?

Yes () No ()

4. If yes specify the number of them

5. Do you know that there is any project of investment that started but failed to proceed?

Yes () No ()

6. If yes specify it

7. What are the reasons for their failures?

8. Do you know that there are investors who decided to change their projects?

Yes () No ()

9. If yes specify them

10. What were the reasons for their changes?

11. Do you think ZIPA has a power to ensure that investors comply with their intended investments?

Yes () No ()

12. If yes what are their powers?

.....

13. If no, what are the reasons

.....

14. What are your suggestions?

.....